

18:44:51

1

UNITED STATES DISTRICT COURT

2

WESTERN DISTRICT OF NEW YORK

3

4

5

- - - - - X

6

UNITED STATES OF AMERICA ) 19CR227

)

7

vs. Buffalo, New York  
JOSEPH BONGIOVANNI, ) January 5, 2022  
Defendant. 10:00 a.m.

8

- - - - - X

9

**CONTINUATION OF EVIDENTIARY HEARING**  
**Transcribed from an Electronic Recording Device**

10

11

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL J. ROEMER  
UNITED STATES MAGISTRATE JUDGE

12

13

14

TRINI E. ROSS, ESQ.  
United States Attorney  
BY: JOSEPH M. TRIPI, ESQ.  
BRENDAN T. CULLINANE, ESQ.  
JORDAN ALAN DICKSON, ESQ.  
Assistant United States Attorney  
138 Delaware Avenue  
Buffalo, New York 14202

15

16

17

18

19

20

JAMES P. HARRINGTON, ESQ.  
Harrington and Mahoney  
70 Niagara Street  
Third Floor  
Buffalo, NY 14202

21

22

23

24

**COURT REPORTER: Karen J. Clark, Official Court Reporter**  
**Karenclark1013@AOL.com**  
**100 State Street**  
**Rochester, New York 14614**

25

INDEX

WITNESS FOR THE DEFENDANT	DX	CX	RDX	RCX
------------------------------	----	----	-----	-----

J. GERNATT	249	271	283	
------------	-----	-----	-----	--

T. MOZG	285	296		
---------	-----	-----	--	--

EXHIBIT NUMBER	PAGE MARKED
----------------	-------------

C, D, E	249
---------	-----

F	294
---	-----

## P R O C E E D I N G

\*

\*

\*

THE CLERK: The United States District Court in the Western District of New York is now in session, the Honorable Michael J. Roemer is presiding. We're here on the matter of the United States versus Joseph Bongiovanni, case No. 21CR227 for a continued evidentiary hearing. I'm sorry, it's 19CR227.

Counsel for the government, please state your name for the record.

MR. TRIPI: Joseph Tripi, Brendan Cullinane and Jordan Dickson for the United States.

THE CLERK: Thank you. Counsel for the

1 USA VS. J. BONGIOVANNI

18:46:10 2 defendant, please state your name for the record.

18:46:15 3 MR. HARRINGTON: Judge, James Harrington for  
18:46:15 4 Joseph Bongiovanni. Judge, also with me, with your  
18:46:15 5 permission, is a law clerk from my office Winter Eaton  
18:46:16 6 (phonetic). With your permission.

18:46:26 7 MAGISTRATE JUDGE ROEMER: Sure, she  
18:46:27 8 certainly has permission. Welcome.

18:46:28 9 We're here for a continuation of the  
18:46:30 10 evidentiary hearing. Mr. Tripi.

18:46:31 11 MR. TRIPI: Yes, Judge. I believe defense  
18:46:35 12 were going to call some witnesses today and we have  
18:46:35 13 those witnesses that we anticipate the defense calling  
18:46:47 14 here.

18:46:47 15 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

18:46:48 16 MR. HARRINGTON: Yes, I call Jack Gernatt.  
18:47:01 17 (J. GERNATT WAS CALLED TO THE WITNESS STAND AND SWORN.)

18:47:13 18 THE CLERK: Please state your name and spell  
18:47:14 19 the name for the record.

18:47:16 20 THE WITNESS: Jack, J-a-c-k, Gernatt,  
18:47:16 21 G-e-r-n-a-t-t.

18:47:16 22 MR. TRIPI: Judge, can we just have a  
18:47:16 23 moment? There are a couple of exhibits that we want to  
18:47:24 24 talk about. Sorry about that.

18:47:24 25 MAGISTRATE JUDGE ROEMER: Sure. Sure.

1 J. GERNETT - DX BY MR. HARRINGTON

18:47:24 2 (Whereupon, there was a pause in the  
18:47:24 3 proceeding.)

18:59:06 4 MR. TRIPI: Judge, I think there are three  
18:59:08 5 Defense Exhibits C, D and E that are going to be marked.  
18:59:12 6 I'll stipulate them into evidence. They are e-mail  
18:59:15 7 threads, and so I'll argue to you that certain e-mails  
18:59:18 8 within the threads should have little to no weight. But  
18:59:21 9 for purposes of the hearing and to move things along,  
18:59:24 10 I'll stipulate them in.

18:59:26 11 MAGISTRATE JUDGE ROEMER: So that is  
18:59:27 12 Defendant's Exhibits C, D and E, is that what you said?

18:59:31 13 MR. HARRINGTON: Yes, Judge.

18:59:31 14 MAGISTRATE JUDGE ROEMER: Those shall be  
18:59:33 15 admitted into evidence.

18:59:33 16 **(Whereupon, Exhibits C, D and E were**  
18:59:46 17 **received into evidence.)**

18:59:46 18 MR. HARRINGTON: Inaudible.

18:59:48 19 MAGISTRATE JUDGE ROEMER: Sure. Thank you.

18:59:51 20 MR. HARRINGTON: All set?

18:59:58 21 MAGISTRATE JUDGE ROEMER: All set.

19:00:15 22 DIRECT EXAMINATION BY MR. HARRINGTON:

19:00:15 23 Q. Mr. Gernatt, who are you employed by?

19:00:18 24 A. U.S. Customs and Border Protection.

19:00:27 25 Q. And how long have you been working for them?

1 J. GERNETT - DX BY MR. HARRINGTON

19:00:28 2 A. Approximately since 2004, so about 18 years.

19:00:32 3 Q. What is your current position?

19:00:34 4 A. An officer with U.S. Customs.

19:00:48 5 Q. Back in 2019, were you also an officer?

19:00:53 6 A. Correct.

19:00:54 7 Q. And were you aware of why you were called to  
19:01:00 8 testify today?

19:01:01 9 A. I am.

19:01:01 10 Q. You and I have not spoken?

19:01:03 11 A. That's correct, sir.

19:01:04 12 Q. And did you review anything to help you prepare  
19:01:08 13 to testify?

19:01:09 14 A. I spoke with Mr. Tripi.

19:01:12 15 Q. Did you review any document?

19:01:14 16 A. I looked at the e-mail threads.

19:01:21 17 Q. At any point in time, were you involved in the  
19:01:23 18 case against United States versus Joseph Bongiovanni?

19:01:28 19 A. I wasn't privy to much information in the case  
19:01:35 20 against Joe Bongiovanni.

19:01:37 21 Q. Back in April of 2019, did you play some role in  
19:01:42 22 coordinating a stop of him at the BWI airport in  
19:01:48 23 Baltimore?

19:01:49 24 A. I did. I received a phone call from Agent Tom  
19:02:26 25 Mozg and Curtis Ryan.

1 J. GERNETT - DX BY MR. HARRINGTON

19:02:28 2 Q. And what was your role in that particular  
19:02:32 3 operation?

19:02:33 4 A. I was asked by Agent Mozg if a border stop could  
19:02:39 5 be conducted on Mr. Bongiovanni, and who he would need  
19:02:44 6 to contact to coordinate that. And I advised him to  
19:02:49 7 speak with border security coordinator Mike Millich.

19:02:52 8 Q. And what was your position at that point in time?

19:02:54 9 A. I was a liaison to Homeland Security  
19:03:02 10 Investigations Border Enforcement Security Task Force.

19:03:02 11 Q. And you were contacted by Homeland Security  
19:03:06 12 officers, is that right?

19:03:08 13 A. Correct.

19:03:09 14 Q. And, as far as you knew, at that time were there  
19:03:16 15 any other agencies involved in this particular part of  
19:03:19 16 the investigation of Mr. Bongiovanni?

19:03:22 17 A. I don't recall what agencies. Obviously, HSI I  
19:03:29 18 knew was involved.

19:03:31 19 Q. And were you advised what was desired by  
19:03:38 20 Department of Homeland Security with respect to Mr.  
19:03:41 21 Bongiovanni?

19:03:42 22 A. I believe they wanted a secondary exam done on  
19:03:46 23 him to include his electronic devices.

19:03:49 24 Q. What does that mean secondary?

19:03:53 25 A. So all persons entering the United States from a

1 J. GERNETT - DX BY MR. HARRINGTON

19:03:56 2 foreign country are subject to an inspection and subject  
19:03:59 3 to search. So, he was selected for a secondary exam  
19:04:04 4 where his luggage was searched and his phone was  
19:04:07 5 examined.

19:04:08 6 Q. Was he selected at random?

19:04:11 7 A. I don't believe so. I believe it was based on the  
19:04:16 8 information from Agent Mozg and the associations.

19:04:20 9 Q. Do you know whether there was a request for a  
19:04:23 10 secondary search sent to somebody at the U.S. Customs in  
19:04:27 11 Baltimore?

19:04:28 12 A. Yes.

19:04:29 13 Q. And you indicated that the secondary search  
19:04:34 14 includes a phone search. Is that right?

19:04:36 15 A. It can, yes.

19:04:37 16 Q. And what do you mean by that?

19:04:38 17 A. That the officers can search a phone at the  
19:04:42 18 border.

19:04:43 19 Q. And what's the extent of that search, if you  
19:04:45 20 know?

19:04:45 21 A. They can do an advance exam, which is hooking up  
19:04:50 22 a device to the phone, or they can do a basic exam,  
19:04:54 23 which is just reviewing the phone itself.

19:04:56 24 Q. And is there a requirement by the traveler to  
19:05:00 25 give permission for these kinds of searches?

1 J. GERNETT - DX BY MR. HARRINGTON

19:05:04 2 A. The traveler to give permission?

19:05:08 3 Q. Yes.

19:05:09 4 A. Not necessarily, no, not permission.

19:05:12 5 Q. And this advance search, this device that it can  
19:05:15 6 be hooked up to, do you know the name of that device?

19:05:18 7 A. I wasn't -- there are different types of devices  
19:05:21 8 that are used, I believe. I don't know what device they  
19:05:26 9 used. I wasn't there for the inspection.

19:05:28 10 Q. Does the use of that device require the traveler  
19:05:32 11 giving a password to their phone?

19:05:34 12 A. If it's locked, yes.

19:05:36 13 Q. And if it's locked, do you know if those devices  
19:05:39 14 can get access to the phone?

19:05:41 15 A. I'm not an expert in utilizing the devices. So I  
19:05:44 16 know sometimes there can be problems.

19:05:46 17 Q. Do you know if Customs and Border Patrol can  
19:05:50 18 seize someone's phone at the border and keep it?

19:05:53 19 A. They can detain a phone and keep it for thorough  
19:05:57 20 investigation, correct.

19:06:00 21 Q. For how long?

19:06:01 22 MR. TRIPI: Objection, Judge. These are  
19:06:03 23 legal issues for this Court.

19:06:04 24 MAGISTRATE JUDGE ROEMER: Overruled.

19:06:05 25 A. I believe, in policy, if they wanted to, they



1 J. GERNETT - DX BY MR. HARRINGTON

19:06:11 2 could detain it up to five days and ask for further, but  
19:06:15 3 I'm not 100 percent certain.

19:06:17 4 Q. Have you ever worked on the seizure of phones  
19:06:21 5 yourself in your capacity?

19:06:24 6 A. I've never seized a phone.

19:06:26 7 Q. So you've never operated the advance machine or  
19:06:28 8 anything like that to get into the phone?

19:06:30 9 A. No. I have operated the machines, but it was  
19:06:33 10 years ago. It was quite a few years.

19:06:38 11 Q. Okay.

19:06:38 12 A. So things have changed.

19:06:43 13 Q. Now, you indicated that you had reviewed some  
19:06:48 14 e-mail threads, and I take it those are ones that would  
19:06:54 15 include you as either a recipient or someone that was  
19:06:57 16 copied on them?

19:06:58 17 A. That's correct.

19:06:59 18 Q. And I'd like to show you Defendant's Exhibit C.

19:07:28 19 THE CLERK: Should be on.

19:07:37 20 MR. TRIPI: I see part of the Judge.

19:07:38 21 MAGISTRATE JUDGE ROEMER: We're looking at  
19:07:39 22 the witness. I think you just have to adjust. We're  
19:08:06 23 just upside down now. There we go.

19:08:38 24 Q. Can you see the display there?

19:08:44 25 A. Yes, sir.

1 J. GERNETT - DX BY MR. HARRINGTON

19:08:45 2 Q. I direct your attention to the middle of the page  
19:08:47 3 right to the name next to sticker?

19:08:49 4 A. Yes, sir.

19:08:50 5 Q. And --

19:08:51 6 THE CLERK: Jim, could you move? Thank you.

19:08:54 7 MR. HARRINGTON: I'm sorry.

19:08:56 8 THE CLERK: Thank you.

19:08:56 9 Q. In the middle of the page at exhibit, Defendant's  
19:09:00 10 Exhibit C, there is an e-mail, and it's addressed to  
19:09:04 11 Jack?

19:09:04 12 A. That's correct.

19:09:05 13 Q. And would that be you?

19:09:06 14 A. That's correct.

19:09:07 15 Q. And it says it's from Curtis, is that right?

19:09:11 16 A. Correct.

19:09:11 17 Q. Who is Curtis?

19:09:12 18 A. It's a HSI Special Agent Curtis Ryan.

19:09:16 19 Q. And he is with DHS?

19:09:18 20 A. He is with Department of Homeland Security,  
19:09:20 21 Homeland Security Investigations.

19:09:22 22 Q. And this is dated on Tuesday April 23, 2019, is  
19:09:27 23 that right?

19:09:27 24 A. Yep.

19:09:28 25 Q. And the request to you is, "can you coordinate

1 J. GERNETT - DX BY MR. HARRINGTON

19:09:34 2 getting him secondary and getting his phone dumped," is  
19:09:38 3 that right?

19:09:38 4 A. Correct.

19:09:39 5 Q. And that refers, does it not, down at the lower  
19:09:43 6 part of the page, to Mr. Bongiovanni?

19:09:46 7 A. Correct.

19:09:48 8 Q. Now, you testified a few minutes ago as to what  
19:09:54 9 you meant by "secondary." What does the word "dumped"  
19:09:57 10 mean to you?

19:09:57 11 A. Dumped means the phone -- looking at the phone  
19:10:00 12 information.

19:10:03 13 Q. That is a term that is common with you and border  
19:10:07 14 patrol and DHS?

19:10:09 15 A. I'd say yes.

19:10:19 16 Q. And then at the top of Defendant's Exhibit C is  
19:10:25 17 another e-mail, and this appears to be from Mr. Curtis  
19:10:32 18 Ryan. Is that right?

19:10:33 19 A. Correct.

19:10:36 20 Q. And it appears that you were copied on that, but  
19:10:38 21 you're not the direct recipient?

19:10:42 22 A. Correct.

19:10:43 23 Q. And that is to Mike Millich?

19:10:46 24 A. Correct.

19:10:46 25 Q. And who is Mike Millich?

1 J. GERNETT - DX BY MR. HARRINGTON

19:10:48 2 A. He is the border security coordinator for office  
19:11:04 3 of field operations under Customs and Border Protection.

19:11:08 4 Q. And is he the person that you contacted to get  
19:11:11 5 this process rolling?

19:11:15 6 A. Yes.

19:12:52 7 Q. If I could, I'd like to show you Defendant's  
19:12:56 8 Exhibit E, and direct your attention to the third page.  
19:13:08 9 And at the bottom of the page, it appears to be an  
19:13:14 10 e-mail from Thomas Mozg. Is that how you pronounce his  
19:13:22 11 name?

19:13:23 12 A. Yes, sir.

19:13:23 13 Q. To Michael Millich that you referred to earlier?

19:13:27 14 A. Correct.

19:13:28 15 Q. And you were copied on that, are you not?

19:13:31 16 A. Yes, sir.

19:13:31 17 Q. And he, Mr. Mozg confirms the fact that he is  
19:13:35 18 contacting Millich at your instruction, correct?

19:13:45 19 A. Correct.

19:13:47 20 Q. And then he says that the following subject is  
19:13:51 21 part of an HSI Buffalo investigation and gives the case  
19:13:59 22 number involving transnational organized crime, correct?

19:14:04 23 A. Correct.

19:14:05 24 Q. And did you know the subject matter or reason for  
19:14:09 25 the secondary search in this case?

1 J. GERNETT - DX BY MR. HARRINGTON

19:14:10 2 A. From what the e-mail says.

19:14:12 3 Q. Do you recall now, did you have any knowledge  
19:14:16 4 what it alleged that Mr. Bongiovanni did?

19:14:19 5 A. I didn't have much information about Mr.  
19:14:21 6 Bongiovanni prior to this encounter, very limited.

19:14:24 7 Q. And then it requested DOMEX extraction, that is  
19:14:29 8 the computer search or phone search, correct?

19:14:33 9 A. That is correct.

19:15:04 10 Q. Now directing your attention to page two of an  
19:15:10 11 e-mail there that is appears at the bottom of the page  
19:15:13 12 and it's from Christopher Candela, is that right?

19:15:17 13 A. Correct.

19:15:17 14 Q. And it indicates that this Mr. Mozg and you are  
19:15:21 15 CC'd on that, right?

19:15:24 16 A. Correct.

19:15:24 17 Q. And do you know who Mr. Candela is?

19:15:27 18 A. Personally, I don't know who he is.

19:15:30 19 Q. Do you know what his role in this investigation  
19:15:33 20 was?

19:15:33 21 A. Per the e-mail, he is a watch commander in the  
19:15:38 22 area port of Baltimore.

19:15:40 23 Q. But other than seeing it on the e-mail you don't  
19:15:43 24 have any personal knowledge?

19:15:44 25 A. No.

1 J. GERNETT - DX BY MR. HARRINGTON

19:15:44 2 Q. Now, in the body of that e-mail, it appears to be  
19:15:50 3 a summary of what happened when Mr. Bongiovanni was  
19:15:54 4 encountered at BWI airport. Is that right?

19:15:58 5 A. Correct.

19:15:59 6 Q. And do you know why you were copied on that?

19:16:04 7 A. I think it was just a string of e-mails it looks  
19:16:07 8 like.

19:16:08 9 Q. But you did not have any further role in  
19:16:10 10 following up on that following this?

19:16:12 11 A. I followed up a little bit on it.

19:16:14 12 Q. What role did you play in following up?

19:16:16 13 A. I thanked Mr. Candela and then I followed up with  
19:16:21 14 Mr. Millich.

19:16:22 15 Q. But other than what is reflected in these  
19:16:26 16 e-mails, would that be the extent of your part of the  
19:16:29 17 investigation of Mr. Bongiovanni?

19:16:30 18 A. Up to this point, yes.

19:16:31 19 Q. After that, did you participate in the  
19:16:34 20 investigation?

19:16:34 21 A. Very limited.

19:16:36 22 Q. When was that?

19:16:36 23 A. After this inspection occurred.

19:16:39 24 Q. When, when?

19:16:42 25 A. Immediately after.

1 J. GERNETT - DX BY MR. HARRINGTON

19:16:43 2 Q. Same day, same night?

19:16:45 3 A. I don't know if it was the same day or the next  
19:16:48 4 day, but I did review information that was collected  
19:16:51 5 during the inspection.

19:16:53 6 Q. And what was the purpose of your doing that?

19:16:56 7 A. I don't recall who, but I believe I was asked to  
19:17:00 8 look at some of the contacts.

19:17:05 9 Q. By contacts, what do you mean by that?

19:17:07 10 A. Contacts that were in the phone.

19:17:17 11 Q. And were you told what it was you were to look  
19:17:20 12 for?

19:17:20 13 A. No, just the contacts on the phone.

19:17:33 14 Q. Now, showing you the first page of exhibit E,  
19:17:42 15 there is an e-mail from Mr. Candela to Mr. Millich. Is  
19:17:50 16 that right, at the bottom?

19:17:51 17 A. Correct.

19:17:51 18 Q. You were not CC'd on that e-mail, is that right?

19:17:55 19 A. Yeah, it looks that way.

19:17:57 20 Q. Do you know why?

19:17:58 21 A. No, I don't.

19:18:00 22 Q. And then right above that there is an e-mail from  
19:18:03 23 apparently from Mr. Millich, same day, Friday, April  
19:18:07 24 206th. I'm sorry the other e-mail was April 26th, 9:54,  
19:18:15 25 there is an e-mail from Mr. Millich to you?

1 J. GERNETT - DX BY MR. HARRINGTON

19:18:18 2 A. Correct.

19:18:18 3 Q. And it says, "Jack, let us know if this was  
19:18:33 4 helpful to the cause"?

19:18:36 5 A. Correct.

19:18:36 6 Q. What does that mean?

19:18:37 7 A. I think Mr. Millich was probably asking if this  
19:18:41 8 inspection was helpful to the agents that were  
19:18:44 9 requesting the exam.

19:18:45 10 Q. What does "the cause" mean?

19:18:48 11 A. Their investigation, I'm guessing, that is my  
19:18:53 12 assumption.

19:18:55 13 Q. And then it says, "I will keep it discrete. If  
19:19:12 14 you would like to let the boss know." And that is  
19:19:14 15 directed to you?

19:19:15 16 A. Correct.

19:19:15 17 Q. Why is this being kept discrete?

19:19:19 18 A. You know, my best recollection is through  
19:19:23 19 conversations with Agent Mozg and Curtis, that it was a  
19:19:27 20 sensitive investigation.

19:19:29 21 Q. Who is the boss?

19:19:33 22 A. That would be Director of Field Operations, Rose  
19:19:37 23 Brophy.

19:19:37 24 Q. Where is she located?

19:19:39 25 A. She is in Buffalo.



1 J. GERNETT - DX BY MR. HARRINGTON

19:19:44 2 Q. Did he need your permission to let her know that?

19:19:48 3 A. No.

19:19:56 4 Q. Now, in the e-mail above that, that is an e-mail  
19:20:04 5 from you to Mr. Millich?

19:20:06 6 A. Correct.

19:20:06 7 Q. Same day, April 26th, 10:22. Is that right?

19:20:11 8 A. Correct.

19:20:17 9 Q. And you indicate to Mr. Millich, you said "yes, I  
19:20:26 10 did"?

19:20:26 11 A. Yes, I did. I'm basically saying it was helpful  
19:20:32 12 to HSI investigators.

19:20:33 13 Q. And then you said, "I believe warrants will be  
19:20:36 14 written soon for phone information because there were  
19:20:47 15 mafia associates and/or possible members listed from the  
19:20:47 16 pictures they sent." Is that right?

19:20:49 17 A. Correct.

19:20:50 18 Q. This is you writing this?

19:20:51 19 A. Correct.

19:20:52 20 Q. And what was that based on?

19:20:54 21 A. Based on --

19:20:55 22 MR. TRIPI: Objection.

19:20:56 23 MAGISTRATE JUDGE ROEMER: Overruled.

19:20:57 24 A. Based on the information seen in the phone.

19:21:04 25 Q. But you're stating that you believe that there

1 J. GERNETT - DX BY MR. HARRINGTON

19:21:06 2 were mafia associates and possible members, I assume  
19:21:12 3 "possible members" you mean members of the mafia, is  
19:21:15 4 that right?

19:21:16 5 A. Yes.

19:21:16 6 Q. And how did you know that?

19:21:18 7 A. Based on conversations with other law  
19:21:23 8 enforcement, the investigators.

19:21:24 9 Q. And you said this was based on the pictures that  
19:21:31 10 were shown?

19:21:33 11 A. Correct.

19:21:33 12 Q. And you looked at those pictures yourself?

19:21:35 13 A. Correct.

19:21:37 14 Q. And did you see anybody in those pictures that  
19:21:41 15 you knew who is associated with the mafia?

19:21:42 16 MR. TRIPI: Objection for clarification  
19:21:45 17 we're talking about pictures of the screen shots in the  
19:21:50 18 contact list of the phone. I don't believe there were  
19:21:52 19 pictures in the phone. There were not pictures of  
19:21:57 20 individuals from the phone, so I want just the record to  
19:22:01 21 be clear that the pictures that are being referenced in  
19:22:04 22 the e-mail are the pictures of the screen shots that  
19:22:06 23 were sent via PDF.

19:22:09 24 MAGISTRATE JUDGE ROEMER: Mr. Harrington.

19:22:10 25 MR. HARRINGTON: That's correct. I'll

1 J. GERNETT - DX BY MR. HARRINGTON

19:22:12 2 clarify.

19:22:13 3 MAGISTRATE JUDGE ROEMER: Okay.

19:22:15 4 Q. Mr. Gernatt, you didn't actually see any pictures  
19:22:19 5 of people's faces?

19:22:20 6 A. No, just contacts, just names with numbers.

19:22:23 7 Q. There were photographs taken of contacts on the  
19:22:27 8 phone. Is that right?

19:22:28 9 A. I believe so, yes.

19:22:29 10 Q. And did you look through those pictures of those  
19:22:33 11 contacts?

19:22:33 12 A. I looked for some, yes.

19:22:38 13 Q. And let me just show you for a minute. And look  
19:22:42 14 at it by yourself, Government Exhibit No. 1.

19:22:51 15 A. Just number one?

19:22:53 16 Q. Go through them all, just to yourself.

19:24:59 17 MR. TRIPI: Judge, while he is reviewing  
19:25:01 18 that, I'm going to have an objection. My objection is  
19:25:03 19 the subsequent analysis about what this witness did or  
19:25:09 20 may have done with anything has zero impact on the  
19:25:13 21 border search that occurred April 23rd, which is really  
19:25:20 22 what this hearing is about. And although I stipulated  
19:25:28 23 these e-mail threads in, really none of the e-mail track  
19:25:32 24 after April 23rd has anything to do with the issue that  
19:25:37 25 is before this court for the hearing. This may be well

1 J. GERNETT - DX BY MR. HARRINGTON

19:25:40 2 and good for trial, but this is not part of the motions  
19:25:43 3 that were made before you or the hearing that you  
19:25:45 4 granted.

19:25:47 5 MAGISTRATE JUDGE ROEMER: Mr. Harrington.

19:25:48 6 MR. HARRINGTON: Judge, this goes back to  
19:25:50 7 the motivations for the stop of Mr. Bongiovanni, the  
19:25:53 8 extent that the search of him at the border and gives  
19:25:58 9 some weight for the Court to consider what the agents  
19:26:01 10 did and there is no connection with that.

19:26:03 11 MR. TRIPI: There is no dispute, Judge,  
19:26:05 12 about the fact that he was selected for a one-day  
19:26:08 13 lookout and targeted. There is no dispute. But this is  
19:26:12 14 just a fishing expedition.

19:26:13 15 MAGISTRATE JUDGE ROEMER: Well, the issue is  
19:26:16 16 we're supposed to be doing today is what information was  
19:26:21 17 given to Baltimore as to what to look for in the phones.  
19:26:26 18 This might have a tendency to do that. I agree, to some  
19:26:29 19 extent, this is a little bit beyond what the hearing was  
19:26:32 20 for, but I'm going to overrule the objection. Mr.  
19:26:32 21 Harrington.

19:26:37 22 CONTINUING DIRECT EXAMINATION BY MR. HARRINGTON:

19:26:37 23 Q. Have you had a chance to look at the screen shots  
19:26:41 24 contained in exhibit 1?

19:26:44 25 A. Yeah. Yes.

1 J. GERNETT - DX BY MR. HARRINGTON

19:27:14 2 Q. And if you know, are those the same screen shots  
19:27:20 3 that you looked at?

19:27:21 4 A. I believe so, yes.

19:27:23 5 Q. And did you recognize the names of any of the  
19:27:26 6 people in the screen shots?

19:27:27 7 A. I recognize a couple of names in the screen  
19:27:31 8 shots, yes.

19:27:31 9 Q. Which ones?

19:27:32 10 MR. TRIPI: Objection.

19:27:33 11 MAGISTRATE JUDGE ROEMER: Overruled.

19:27:34 12 MR. TRIPI: Judge, may I just state the  
19:27:35 13 basis?

19:27:36 14 MAGISTRATE JUDGE ROEMER: Surely.

19:27:37 15 MR. TRIPI: This answer will get into the  
19:27:39 16 whole reason that our search --

19:27:39 17 MAGISTRATE JUDGE ROEMER: This is about as  
19:27:41 18 far as I'm going to let him go.

19:27:43 19 MR. TRIPI: Once he starts mentioning names,  
19:27:46 20 then we're getting into the whole reason why our search  
19:27:50 21 warrants remain sealed. As soon as he reveals what  
19:27:53 22 names law enforcement had an interest in and people that  
19:27:57 23 are not charged and are subject to current  
19:27:59 24 investigation.

19:28:00 25 MAGISTRATE JUDGE ROEMER: These are

1 J. GERNETT - DX BY MR. HARRINGTON

19:28:03 2 government's exhibits, it's in evidence and it's a  
19:28:04 3 public document.

19:28:05 4 MR. TRIPI: It's a public document, but  
19:28:07 5 there are many more names in the series of screen0 shots  
19:28:11 6 than this witness is going to know about in response to  
19:28:13 7 this question.

19:28:14 8 MAGISTRATE JUDGE ROEMER: The original basis  
19:28:16 9 of the objection is it's going to put out information  
19:28:18 10 that nobody else knows; this is public.

19:28:21 11 MR. TRIPI: Yeah, but there is probably 30  
19:28:24 12 names on here and if he answers the question about who  
19:28:28 13 he knew about, not only does this have nothing to do  
19:28:31 14 with the border search, now we're getting into the  
19:28:34 15 reason why our search warrants remain sealed and other  
19:28:39 16 aspects of the case.

19:28:40 17 MAGISTRATE JUDGE ROEMER: I don't follow  
19:28:41 18 you.

19:28:41 19 MR. TRIPI: There are current subjects or  
19:28:58 20 targets listed in these who are not publically  
19:29:01 21 identified. That is what I'm saying --

19:29:04 22 MAGISTRATE JUDGE ROEMER: They are  
19:29:04 23 publically identified, this exhibit is a public exhibit.

19:29:08 24 MR. TRIPI: But the exhibit doesn't tell  
19:29:11 25 anyone in the world who the subject of the investigation

1 J. GERNETT - DX BY MR. HARRINGTON

19:29:14 2 is. This answer may that is all I'm saying.

19:29:18 3 MAGISTRATE JUDGE ROEMER: Mr. Harrington.

19:29:19 4 MR. HARRINGTON: Judge --

19:29:22 5 MAGISTRATE JUDGE ROEMER: I'm not going to

19:29:23 6 let you go too much further, Mr. Harrington. The

19:29:26 7 purpose of today's hearing was what information did he

19:29:29 8 have that they sent to Baltimore for them to look for.

19:29:32 9 That was the purpose of today's hearing.

19:29:37 10 MR. HARRINGTON: But, again, I go back to

19:29:40 11 what I argued before, Judge, was that we will argue to

19:29:43 12 the Court about the improper motivation for what was

19:29:46 13 done here and the extent of what was done, and that we

19:29:50 14 believe that it went beyond the authority of Customs and

19:29:54 15 Border Patrol in this particular case.

19:29:55 16 MAGISTRATE JUDGE ROEMER: I'm not sure their

19:29:56 17 motivation is relevant.

19:29:59 18 MR. HARRINGTON: It can be relevant, Judge,

19:30:01 19 if it's --

19:30:02 20 MAGISTRATE JUDGE ROEMER: I mean, either

19:30:03 21 they weren't allowed to look at it, or they were allowed

19:30:06 22 to look at it.

19:30:09 23 MR. HARRINGTON: It goes to.

19:30:11 24 MAGISTRATE JUDGE ROEMER: I mean, there is

19:30:11 25 no claim here of outrageous government conduct or

1 J. GERNETT - DX BY MR. HARRINGTON

19:30:15 2 anything like that.

19:30:15 3 MR. HARRINGTON: We don't know that.

19:30:16 4 MAGISTRATE JUDGE ROEMER: Then you are on a  
19:30:18 5 fishing expedition.

19:30:19 6 MR. HARRINGTON: This case started with all  
19:30:21 7 sorts of media publicity. This was an investigation of  
19:30:25 8 the Italian organized crime, they put it in the  
19:30:28 9 indictment and have press conferences and all other  
19:30:32 10 types of things. Mr. Tripi is trying to walk back from  
19:30:36 11 that and trying to hide from that. And what we're  
19:30:38 12 saying to the Court, that may be an invidious motivation  
19:30:43 13 and it may lead to outrageous government conduct.

19:30:43 14 MAGISTRATE JUDGE ROEMER: I don't know  
19:30:43 15 having him identify the individual people, I don't know.  
19:30:43 16 I am going to sustain the objections. Ask the next  
19:30:43 17 question.

19:56:35 18 Q. Directing your attention to Exhibit E. At the top  
19:56:40 19 it's got in the second paragraph of the first e-mail, at  
19:56:44 20 the top, it's got "FYI"; is that right?

20:31:57 21 A. Correct.

20:31:58 22 Q. And it's got looks like a paragraph redacted or  
20:32:02 23 blacked out. Is that right?

20:32:04 24 A. Correct.

20:32:04 25 Q. Did you do that?



1 J. GERNETT - DX BY MR. HARRINGTON

20:32:05 2 A. I didn't black it out.

20:32:07 3 MR. TRIPI: I redacted it, your Honor. And  
20:32:09 4 I explained to Mr. Harrington why and the nature of  
20:32:13 5 what's in that paragraph. I did that last week.

20:32:16 6 MAGISTRATE JUDGE ROEMER: He asked the  
20:32:18 7 question, the witness said he didn't black it out. I  
20:32:21 8 don't know what the next question is.

20:32:24 9 MR. HARRINGTON: Judge, I would request that  
20:32:25 10 the Court be given an unredacted copy of that email for  
20:32:32 11 the Court to review.

20:32:32 12 MAGISTRATE JUDGE ROEMER: Okay.

20:32:33 13 MR. TRIPI: I can do that, your Honor.

20:32:34 14 MAGISTRATE JUDGE ROEMER: You got one right  
20:32:36 15 now?

20:32:36 16 MR. TRIPI: I don't. It's saved on my  
20:32:38 17 Cloud. I can get it to you after the hearing or if you  
20:32:42 18 want it after the hearing. I didn't bring an unredacted  
20:32:46 19 copy. Generally, the paragraph relates to this witness'  
20:32:58 20 view of what the larger investigation scope was and so I  
20:33:03 21 redacted it out.

20:33:04 22 MAGISTRATE JUDGE ROEMER: Okay. Just get  
20:33:06 23 that to me, okay, after the hearing.

20:33:08 24 MR. TRIPI: I will.

20:33:10 25 MR. HARRINGTON: That's all the questions I

1 J. GERNETT - CX BY MR. TRIPI

20:33:12 2 have.

20:33:12 3 MAGISTRATE JUDGE ROEMER: Thank you, Mr.

20:33:13 4 Harrington. Hang on, sir. Hang on, sir. Mr. Tripi

20:33:17 5 gets a chance to ask you questions.

20:33:17 6 CROSS EXAMINATION BY MR. TRIPI:

20:34:10 7 Q. CBP Officer, is this your first time testifying  
20:34:13 8 in Federal Court?

20:34:14 9 A. Yes, sir.

20:34:15 10 Q. And you are a CBP Officer assigned to the Office  
20:34:20 11 of Field Operations, correct?

20:34:22 12 A. Correct.

20:34:22 13 Q. And generally your involvement has been searching  
20:34:26 14 bridges, being at bridges in and around the Buffalo  
20:34:30 15 area. Is that correct?

20:34:30 16 A. The ports of entries, correct.

20:34:32 17 Q. What ports of entries?

20:34:34 18 A. Buffalo, Lewiston, Rainbow Bridge, Broco bridge,  
20:34:42 19 Buffalo Airport and liaisioning with the HSI.

20:34:46 20 Q. So the bulk of your career has been involved with  
20:34:50 21 dealing with passenger vehicles at the bridges?

20:34:53 22 A. Correct, passengers and commercial.

20:34:56 23 Q. Trucks and stuff?

20:34:57 24 A. Trucks, correct.

20:34:59 25 Q. And how long have you been with CBP?

1 J. GERNETT - CX BY MR. TRIPI

20:35:03 2 A. Since January of 2004.

20:35:05 3 Q. And that was all in the Buffalo area?

20:35:07 4 A. All in the Buffalo area, correct.

20:35:12 5 Q. And, is it accurate that with CBP, you were part  
20:35:17 6 of their anti-terrorism and contraband enforcement team  
20:35:21 7 from roughly 2008 to 2018 doing work at the bridges?

20:35:24 8 A. Roughly, yep.

20:35:26 9 Q. And in 2019 you, begin this role sort of a  
20:35:31 10 liaison to HSI, correct?

20:35:33 11 A. Correct.

20:35:34 12 Q. And what did that mean?

20:35:35 13 A. It gave HSI singular points of contacts to the  
20:35:40 14 bridges, to CBP. So instead of 6, 700 officers that  
20:35:44 15 work there, it gave them a singular contact being myself  
20:35:48 16 and my partner Joe Spadone.

20:35:51 17 Q. And do you understand that is the reason you were  
20:35:54 18 the person in contact with HSI to start the ball rolling  
20:36:00 19 -- withdrawn. To start facilitating efforts to do this?

20:36:04 20 A. I believe so.

20:36:06 21 Q. Now, at that point in time, early 2019, did you  
20:36:24 22 know HSI Special Agent Curtis Ryan very well?

20:36:28 23 A. Not too well, I would say.

20:36:31 24 Q. Did you know CBP Officer Thomas Mozg very well?

20:36:37 25 A. I knew him more than I knew Curtis Ryan, but at

1 J. GERNETT - CX BY MR. TRIPI

20:36:41 2 that time, not very well, but I knew them both.

20:36:44 3 Q. At that time, you didn't have daily interactions?

20:36:47 4 A. That's correct.

20:36:54 5 Q. And, airports that receive incoming international

20:36:59 6 flights would be the border, or the functional

20:37:04 7 equivalence of the border, right?

20:37:07 8 A. Correct, they are a functional equivalent to the

20:37:10 9 border.

20:37:10 10 Q. And that would include BWI in Baltimore?

20:37:13 11 A. Correct.

20:37:13 12 Q. And now are Homeland Security Investigations and

20:37:17 13 CBP both under the Department of Homeland Security

20:37:42 14 umbrella?

20:37:43 15 A. Correct.

20:37:44 16 Q. And do HSI and CBP share the same system to

20:38:11 17 access information?

20:38:12 18 A. Correct.

20:38:12 19 Q. And CPB Officer Thomas Mozg, he is with CBP, but

20:38:23 20 he has a different job than you, is that correct?

20:38:26 21 A. Correct. He is with Customs and Border

20:38:29 22 Protection, but with border patrol.

20:38:31 23 Q. Very briefly, how does that differ from your

20:38:33 24 role?

20:38:34 25 A. So under Customs and Border Protection, there is

1 J. GERNETT - CX BY MR. TRIPI

20:38:38 2 air and marine operations, AMO, border patrol and then  
20:38:53 3 OFO. I work at the ports of entries. Tommy works  
20:38:57 4 between the ports of entry, Agent Mozg, between the  
20:39:02 5 ports of entries. A lot of time we clarify that Tom is  
20:39:06 6 the guy in the green uniform, and I'm the guy in the  
20:39:09 7 blue uniform if that makes sense.

20:39:12 8 Q. And Border Patrol, they will do follow up into  
20:39:24 9 the interior of the United States?

20:39:27 10 A. Correct.

20:39:32 11 Q. And you've already explained primary and  
20:39:35 12 secondary inspections. Are one-day lookouts common in  
20:39:38 13 your line of work?

20:39:39 14 A. They are common, yes.

20:39:40 15 Q. Are searches that are predicated or as a result  
20:39:48 16 of law enforcement information shared by other agencies  
20:39:51 17 a common part of your job?

20:39:53 18 A. It can be, yes.

20:39:55 19 Q. In your role at the bridges, have you done  
20:39:58 20 searches coordinating with border searches coordinating  
20:40:11 21 with other law enforcement agencies?

20:40:34 22 A. Yes.

20:40:34 23 Q. And is that based on information that the other  
20:40:38 24 law enforcement agencies held that you might not have  
20:40:42 25 been privy to?

1 J. GERNETT - CX BY MR. TRIPI

20:40:43 2 A. Correct.

20:40:44 3 Q. What other agencies have you helped facilitate  
20:40:48 4 searches at bridges?

20:40:49 5 A. The HSI, FBI, DEA, pretty much about it.

20:40:57 6 Q. State and local?

20:40:58 7 A. State and local, yeah, New York State Police we  
20:41:02 8 have, sometimes local, local cops.

20:41:04 9 Q. So what you were being asked to do as it related  
20:41:08 10 to Mr. Bongiovanni, did you see any problem with it?

20:41:11 11 A. No.

20:41:15 12 Q. Did it seem like a routine part of your job?

20:41:18 13 A. It seemed pretty routine being that he was coming  
20:41:22 14 from another country.

20:41:23 15 Q. And by early 2019, did you know who Joseph  
20:41:30 16 Bongiovanni was?

20:41:31 17 A. Prior to when?

20:41:32 18 Q. Prior to your involvement in this event, this  
20:41:36 19 sequence of events, did you know who Mr. Bongiovanni  
20:41:39 20 was?

20:41:39 21 A. Very limited at this point.

20:41:42 22 Q. Had you ever met him personally?

20:41:44 23 A. Never met him personally.

20:41:46 24 Q. Had you ever seen him, as far as you know?

20:41:49 25 A. No.

1 J. GERNETT - CX BY MR. TRIPI

20:41:50 2 Q. Would it be accurate to say this was the first or  
20:42:01 3 among the first actual involvement you had in this  
20:42:05 4 investigation?

20:42:05 5 A. That would be correct.

20:42:09 6 Q. So to state it more accurately, you did not have  
20:42:13 7 much involvement in this investigation prior to April  
20:42:16 8 23rd, 2018?

20:42:20 9 A. That is pretty accurate.

20:42:28 10 Q. Now, I'm going to put on the screen Government's  
20:42:31 11 Exhibit 34, which is already in evidence from a prior  
20:42:36 12 occasion?

20:42:36 13 A. Mm-hmm.

20:42:37 14 Q. I'm just going to start the third page just has a  
20:42:42 15 signature block, so I'm going to start with the second  
20:42:45 16 page. Second page of exhibit 34 has an e-mail from  
20:42:51 17 Thomas Mozg to Mr. Millich, correct?

20:42:55 18 A. Correct.

20:42:56 19 Q. And in the context of your organization, is Mr.  
20:42:59 20 Millich a supervisor several levels above you?

20:43:02 21 A. Several, yes.

20:43:03 22 Q. And he is someone who can make contact with a  
20:43:07 23 watch commander in Baltimore?

20:43:08 24 A. Correct.

20:43:12 25 Q. Now, looking at the body of this e-mail, April

1 J. GERNETT - CX BY MR. TRIPI

20:43:15 2 23rd, 2019 at 2:46 p.m., my next question is, Defense  
20:43:25 3 Exhibit E, page 3, it's the same e-mail, correct? April  
20:43:39 4 23rd, 2019, 2:46.

20:43:42 5 A. Correct, yes.

20:43:43 6 Q. Right.

20:43:45 7 MR. TRIPI: So on the screen now, Judge, is  
20:43:47 8 defense, Government's Exhibit 34 in evidence. And we're  
20:43:53 9 moving that. And now on the screen is page two, Defense  
20:43:57 10 Exhibit E.

20:44:08 11 Q. Next I'm showing you Government's Exhibit 34,  
20:44:13 12 page 1. This is an e-mail back from that is Watch  
20:44:22 13 Commander Candela, correct?

20:44:23 14 A. Correct.

20:44:23 15 Q. And has copied Joseph Spadone, yourself and  
20:44:38 16 Curtis Ryan and Thomas Mozg, correct?

20:44:41 17 A. And Mike Millich.

20:44:43 18 Q. And Mike Millich, sorry.

20:44:44 19 A. Yep.

20:44:45 20 Q. And it begins with "Alcon," gives a description  
20:44:51 21 and ends with "Regards, Chris Candela," correct?

20:44:54 22 A. Correct.

20:44:55 23 Q. Now I'm going to put on the screen Defense  
20:44:58 24 Exhibit E, page two. The e-mail from Candela and  
20:45:05 25 Defense Exhibit E page 2, April 23, 2019 at 10:13 p.m.



1 J. GERNETT - CX BY MR. TRIPI

20:45:43 2 That is the same e-mail that we just showed you in  
20:45:47 3 Government's Exhibit 34, correct?

20:45:49 4 A. Correct.

20:45:54 5 Q. And we'll bring back on the screen Government's  
20:45:57 6 Exhibit 34, I'm going to hand you up, actually,  
20:46:02 7 Government's Exhibit 34 and Defense Exhibit E. Look at  
20:46:05 8 both of them. And then I'll ask you a question.

20:46:25 9 Page one of Government's Exhibit 34, the e-mail  
20:46:29 10 from Watch Commander Candela describing the results.  
20:46:38 11 That e-mail is where those pictures you were shown was  
20:46:43 12 transmitted, correct?

20:46:47 13 A. I believe so, yes.

20:51:06 14 Q. And Government's Exhibit 34, the only difference  
20:51:09 15 with Defense Exhibit E is that e-mail thread stops with  
20:51:13 16 the results of the search as described by Watch  
20:51:19 17 Commander Candela and the photos that were sent via PDF,  
20:51:26 18 correct?

20:51:26 19 A. That's correct.

20:51:27 20 Q. Defense Exhibit E continues with certain e-mails  
20:51:40 21 that occurred in the days that follow April 23rd, 2019,  
20:51:46 22 correct?

20:51:46 23 A. Correct.

20:52:31 24 Q. I'm going to show you, again, put on the screen  
20:52:35 25 Defense Exhibit E that is in evidence. And I'm going to

1 J. GERNETT - CX BY MR. TRIPI

20:52:52 2 focus back in on that e-mail that is duplicated on  
20:52:56 3 Government's Exhibit 34. On Defense Exhibit E from  
20:53:03 4 Commander Candela, do you see a sentence in there that  
20:53:12 5 said, "We examined the photos and some of the text  
20:53:15 6 messages with no derog to report." Do you see that?

20:53:19 7 A. I see that, correct.

20:53:20 8 Q. What does the term "derog" mean as you understand  
20:53:24 9 it?

20:53:25 10 A. Derogatory information.

20:53:27 11 Q. Would that be a reference to nothing to arrest  
20:53:31 12 Mr. Bongiovanni for at that time?

20:53:33 13 A. That's correct.

20:53:34 14 Q. Now, of course, you didn't know much about the  
20:53:37 15 investigation, correct?

20:53:38 16 A. Correct.

20:53:39 17 Q. And would it be fair to say, the officers  
20:53:44 18 involved in the offense in Baltimore didn't know much,  
20:53:51 19 either?

20:53:51 20 A. Correct.

20:53:52 21 Q. Is there anything wrong with them sharing the  
20:53:54 22 information from you that they obtained from the phone  
20:53:56 23 and with Special Agent Curtis Ryan, as far as you  
20:53:59 24 understand it?

20:54:00 25 A. No.

1 J. GERNETT - CX BY MR. TRIPI

20:54:02 2 Q. Do you, as members of law enforcement, share  
20:54:08 3 information frequently?

20:54:09 4 A. Yes, correct.

20:54:11 5 Q. And is sharing of information encouraged,  
20:54:14 6 generally?

20:54:14 7 A. Correct.

20:54:22 8 Q. If someone is, in your experience, a subject or a  
20:54:26 9 target of an ongoing investigation of another agency and  
20:54:30 10 you or a member of CBP generally is aware of it, is it  
20:54:34 11 more likely or less likely that person will be secondary  
20:54:37 12 at the border.

20:54:44 13 A. Depends on the investigation and how the  
20:55:01 14 investigators would like that to be handled, you know.

20:55:05 15 Q. In a case like this, where there is a request, is  
20:55:08 16 that common?

20:55:09 17 A. That we do it, yes.

20:55:12 18 Q. Now, did you -- did you exercise any supervision  
20:55:17 19 over the way the people in Baltimore did the search?

20:55:20 20 A. No.

20:55:21 21 Q. Did you offer any advice?

20:55:22 22 A. No.

20:55:23 23 Q. Did you give them any directives?

20:55:25 24 A. No.

20:55:25 25 Q. Could it have been within their discretion to not

1 J. GERNETT - CX BY MR. TRIPI

20:55:30 2 do the search if so they so decided?

20:55:32 3 A. Yes, they could have not done it.

20:55:34 4 Q. I'm going to show you Defense Exhibit D. Just  
20:55:44 5 very quickly. You see those e-mails both on page one of  
20:55:48 6 the exhibit, the e-mail, April 23rd, 2019, 12:44 p.m.  
20:55:54 7 from Curtis Ryan to you with a CC to Joseph Spadone?

20:56:08 8 A. Correct.

20:56:09 9 Q. It says, "Jack, can you coordinate secondary,"  
20:56:13 10 Mr. Harrington asked you about that?

20:56:15 11 A. Correct.

20:56:15 12 Q. Is that consistent with any phone conversations  
20:56:19 13 you had with Curtis Ryan?

20:56:20 14 A. It is.

20:56:23 15 Q. And is that about all you did was put Mozg and  
20:56:27 16 Ryan in touch with Millich?

20:56:29 17 A. I would say so, yes.

20:56:40 18 Q. Just to clarify, was it prior to the search, that  
20:56:44 19 is all you did?

20:56:44 20 A. Correct.

20:57:17 21 Q. Now, the e-mail that Mr. Harrington asked you  
20:57:19 22 about from April 26th, right?

20:57:24 23 A. Mm-hmm.

20:57:25 24 Q. The first one is from a supervisor several levels  
20:57:30 25 above you, Mr. Millich, where he asks you, "let us know

1 J. GERNETT - CX BY MR. TRIPI

20:57:35 2 if it was helpful to the cause, I will keep it discrete,  
20:57:39 3 but would like to let the boss know," correct?

20:57:41 4 A. Correct.

20:57:42 5 Q. When a supervisor asks you a question, are you  
20:57:54 6 allowed to ignore their question to you?

20:57:57 7 A. Probably not a good idea.

20:57:58 8 Q. And so you indicated that and boss in this e-mail  
20:58:06 9 you understood to be Rose Brophy?

20:58:08 10 A. Yes.

20:58:09 11 Q. And would she be the ultimate boss on your job?

20:58:12 12 A. She would be the ultimate boss in charge of all  
20:58:16 13 New York State for Customs and Border Protection minus  
20:58:42 14 New York City.

20:58:43 15 Q. And did you have an interest in becoming involved  
20:58:46 16 in more involved in these types of investigations?

20:58:48 17 A. I did.

20:58:49 18 Q. So when you were responding to Mr. Millich, did  
20:58:54 19 you have any of your desire to remain involved in these  
20:58:58 20 types of investigations in your mind?

20:59:00 21 A. Yeah.

20:59:00 22 Q. In your experience, you were asked about, and I  
20:59:49 23 understand sometimes you used a Cellebrite or some type  
20:59:53 24 of device, but in your experience or things that you  
20:59:55 25 learned, are there times when phones are hooked up to

1 J. GERNETT - RDX BY MR. HARRINGTON

20:59:59 2 those devices and they ask for passwords, and if a  
21:00:02 3 password is not had, then you can't do a full logical  
21:00:10 4 examination?

21:00:11 5 A. Correct, that has happened.

21:00:17 6 MR. TRIPI: Just a minute, your Honor.

21:00:18 7 MAGISTRATE JUDGE ROEMER: Sure.

21:00:52 8 MR. TRIPI: I don't have anything further.

21:00:53 9 MAGISTRATE JUDGE ROEMER: Thank you.

21:00:54 10 Mr. Harrington?

21:00:55 11 REDIRECT EXAMINATION BY MR. HARRINGTON:

21:01:02 12 Q. Mr. Gernatt, Mr. Tripi just asked you a question  
21:01:07 13 about your interest about being involved in  
21:01:09 14 investigations like this?

21:01:10 15 A. Mm-hmm.

21:01:11 16 Q. What do you mean by that?

21:01:13 17 A. I'm more involved than probably not working if  
21:01:16 18 the primary environment at the borders, but more closely  
21:01:20 19 with some of the other federal partners.

21:01:24 20 Q. So regardless of this case, you're talking just  
21:04:12 21 in general, like, being involved in something more that  
21:04:15 22 you're interested in or promoting your career or that  
21:04:18 23 kind of thing, is that what you mean?

21:04:19 24 A. Correct.

21:04:19 25 Q. And Mr. Tripi asked you on Government's Exhibit E

1 J. GERNETT - RDX BY MR. HARRINGTON

21:04:23 2 about your giving advice to the CBP in Baltimore about  
21:04:32 3 how they would conduct the examination. I direct your  
21:04:37 4 attention to page 3 at the top. And there appears to be  
21:04:43 5 an e-mail there from Mr. Mozg on April 23 at 5:06 to  
21:04:50 6 Michael Millich, correct?

21:04:51 7 A. Correct.

21:04:52 8 Q. And you are CC'd on that; is that right?

21:04:55 9 A. Correct.

21:04:55 10 Q. And in that e-mail from him, he is recommending  
21:05:03 11 what the approach should be to Mr. Bongiovanni and his  
21:05:05 12 family, is he not?

21:05:07 13 A. Correct.

21:05:07 14 Q. And so while you didn't do that in this case,  
21:05:12 15 that is not uncommon from somebody from Buffalo to  
21:05:15 16 Baltimore to make recommendations on how to proceed, is  
21:05:19 17 that right?

21:05:19 18 A. Correct.

21:05:20 19 MR. HARRINGTON: That's all I have, Judge.

21:05:21 20 MAGISTRATE JUDGE ROEMER: Thank you, sir.

21:05:23 21 Anything further?

21:05:23 22 MR. TRIPI: No, your Honor. No, thank you.

21:05:25 23 MAGISTRATE JUDGE ROEMER: Now you can step  
21:05:26 24 down, sir.

21:05:28 25 THE WITNESS: Thank you, sir.

1 T. MOZG - DX BY MR. HARRINGTON

21:05:33 2 MAGISTRATE JUDGE ROEMER: Mr. Harrington,  
21:05:34 3 you want to call your next witness?

21:05:35 4 MR. HARRINGTON: (Inaudible).

21:06:29 5 THE CLERK: Step up this way, please. Right  
21:06:34 6 this way, and I'll swear you in.

21:06:36 7 (T. MOZG WAS CALLED TO THE WITNESS STAND AND SWORN.)

21:06:44 8 Thank you. Please have a seat. When  
21:06:46 9 seated, you may take off your mask and speak into the  
21:06:49 10 microphone and state your name for the record.

21:06:51 11 THE WITNESS: Okay.

21:06:55 12 THE CLERK: Thank you.

21:06:58 13 THE WITNESS: Thomas William Mozg.

21:07:05 14 THE CLERK: Thank you.

21:07:09 15 DIRECT EXAMINATION BY MR. HARRINGTON:

21:07:12 16 Q. Morning, Mr. Mozg.

21:07:14 17 A. Morning.

21:07:14 18 Q. My name is Jim Harrington. I represent Mr.  
21:07:17 19 Bongiovanni in this case. And whom are you employed by?

21:07:21 20 A. I've been employed as a law enforcement agent  
21:07:26 21 with the U.S. Border Patrol for over 12 years.

21:07:31 22 Q. So I take it you were employed by them back in  
21:07:34 23 April of 2019?

21:07:35 24 A. Yes.

21:07:36 25 Q. And what is your position now?



1 T. MOZG - DX BY MR. HARRINGTON

21:07:38 2 A. I'm currently a border patrol agent intelligence.  
21:07:41 3 I'm attached to Homeland Security Investigations and the  
21:07:44 4 Federal Bureau of Investigations here in Buffalo.

21:07:48 5 Q. So I take it you work regularly with Homeland  
21:07:53 6 Security and the FBI?

21:07:53 7 A. Yes. I work in a plain-clothes capacity and  
21:07:56 8 perform liaison and assist with investigations.

21:07:59 9 Q. And back in April of 2019, was your job the same  
21:08:03 10 then or was it different?

21:08:05 11 A. Same position, I was employed here in Buffalo  
21:08:08 12 with the Border Patrol as a plain clothes intelligence  
21:08:24 13 agent and conducted liaison and assisted in Homeland  
21:08:30 14 Security Investigations.

21:08:30 15 Q. Did there come a time when you became involved in  
21:08:34 16 a case in the investigation of Joseph Bongiovanni?

21:08:37 17 A. Yes.

21:08:38 18 Q. And do you remember when that was?

21:08:40 19 A. Approximately late 2018, early 2019.

21:08:44 20 Q. And from then until April 23 of 2019, were you  
21:08:49 21 involved in his case, in the investigation in this case?

21:08:52 22 A. Certain aspects. I was assisting, I wasn't a  
21:08:57 23 lead case agent.

21:08:58 24 Q. Who were you working with, what agency?

21:09:01 25 A. I was attached to Homeland Security

1 T. MOZG - DX BY MR. HARRINGTON

21:09:04 2 Investigations. I was working with Curtis Ryan at the  
21:09:06 3 time, who is a special agent.

21:09:08 4 Q. And who is he with?

21:09:10 5 A. Homeland Security Investigations here in Buffalo,  
21:09:14 6 New York.

21:09:16 7 Q. Now, back on April the 23rd of 2019 -- well,  
21:09:36 8 first of all, did you review anything to assist you in  
21:09:39 9 testifying today?

21:09:40 10 A. I met with the U.S. Attorney's Office prior to  
21:09:44 11 recall events.

21:09:45 12 Q. And who did you meet with?

21:09:49 13 A. Joseph Tripi.

21:09:50 14 Q. Was anybody else present?

21:09:52 15 A. At the time, I believe it was Jack Gernatt.

21:09:55 16 Q. Did you and Gernatt meet with Tripi together?

21:09:59 17 A. Yes.

21:09:59 18 Q. Did you review your testimony together and what  
21:10:01 19 had happened?

21:10:02 20 A. We reviewed the events and the exhibits.

21:10:04 21 Q. What exhibits did you review?

21:10:06 22 A. E-mails and a lookout record that I had placed.

21:10:12 23 Q. And were some of those e-mails, were you either  
21:10:15 24 an author or recipient or copied on those?

21:10:18 25 MR. TRIPI: Just to clarify the record, we

1 T. MOZG - DX BY MR. HARRINGTON

21:10:20 2 met once separately, the agent and I. And then once  
21:10:25 3 together, just to make sure the record is clear.

21:10:28 4 Q. When did you meet first with Mr. Tripi, do you  
21:10:31 5 remember?

21:10:31 6 A. I had just gotten back, it was, I believe it was  
21:10:35 7 just after Christmas.

21:10:36 8 Q. And was that with Gernatt or not?

21:10:40 9 A. As Mr. Tripi said, we met once separately and  
21:10:43 10 then once again together.

21:10:45 11 Q. What was first, separate or together?

21:10:47 12 A. I believe I met separately first.

21:13:18 13 Q. You know Michael Millich?

21:13:20 14 A. I have spoken to him. I'm aware that he is in  
21:13:24 15 management and Customs and Border Protection here in  
21:13:27 16 Buffalo.

21:13:28 17 Q. Back in April of 2019, did you know him then?

21:13:33 18 A. Yes.

21:13:34 19 Q. And you said you were aware of what he was. Did  
21:13:38 20 you know him personally?

21:13:39 21 A. I didn't know him personally.

21:13:41 22 Q. Now, I'm going to show you page 3 of Defense  
21:13:53 23 Exhibit E, and ask you, you can look at it right on the  
21:13:58 24 screen. And direct your attention to an e-mail near the  
21:14:06 25 bottom of the page. It appears to be from you, is that

1 T. MOZG - DX BY MR. HARRINGTON

21:14:11 2 right?

21:14:11 3 A. That's correct.

21:14:11 4 Q. And Mr. Millich -- it's April 23, 2019 at 2:46,  
21:14:16 5 is that right?

21:14:17 6 A. That's correct.

21:14:17 7 Q. And you are sending this to Mike Millich?

21:14:20 8 A. Yes.

21:14:21 9 Q. And you are requesting him to do certain things  
21:14:25 10 with respect to Mr. Bongiovanni's anticipated arriving  
21:14:31 11 in the United States at BWI Airport. Is that right?

21:14:35 12 A. That's correct. We had information that he was  
21:14:37 13 going to make entry into the United States at the  
21:14:41 14 Baltimore Airport at a port of entry facility, which is  
21:14:47 15 run by Customs and Border Protection.

21:15:02 16 Q. Now, right above that, there is an e-mail from  
21:15:09 17 Mr. Millich, but it doesn't appear who that is addressed  
21:15:17 18 to. Can you see what I'm talking about, right in the  
21:15:20 19 middle, middle of the page says on April 23, 2019 at  
21:15:25 20 4:25 p.m. Michael Millich wrote?

21:15:27 21 A. Okay.

21:15:28 22 Q. Do you know who he wrote that to?

21:15:31 23 A. That is Christopher Candela. I believe he is CBP  
21:15:39 24 management in Baltimore. And Curtis would be Curtis  
21:15:42 25 Ryan, if I'm not mistaken. And Thomas would be myself.

1 T. MOZG - DX BY MR. HARRINGTON

21:15:57 2 Q. There is no -- there is no address on that  
21:16:01 3 particular e-mail, though, is there? It says it was  
21:16:07 4 sent from the iPhone. I don't know if that makes a  
21:16:10 5 difference?

21:16:10 6 A. I don't know what happens electronically with the  
21:16:13 7 address stamp, but it looks like the recipients are  
21:16:13 8 myself, Christopher Candela and Curtis Ryan and  
21:16:13 9 obviously Mile Millich, who is the author.

21:16:13 10 Q. It appears Mr. Millich is asking for advice from  
21:21:54 11 either you or Mr. Ryan with respect to how this  
21:21:57 12 interception of Mr. Bongiovanni was to take place.

21:22:02 13 A. Well, it was for Mr. Bongiovanni, and that was to  
21:22:06 14 be inspected when he enters the United States, so, yes,  
21:22:08 15 then the instructions were the reason why we got Michael  
21:22:14 16 Millich involved because he is CBP management, and  
21:22:17 17 wanted to ensure everything was done professionally and  
21:22:21 18 appropriately to be inspected at the border.

21:22:41 19 Q. Is there some reason you think it wouldn't be if  
21:22:46 20 he wasn't involved?

21:22:46 21 A. No, it's just courtesy to be transparent because  
21:22:58 22 sometimes someone could be referred for inspection, but  
21:23:02 23 I'm not there on site to conduct the inspection. It's  
21:23:06 24 just officers saying, hey, can you please inspect this.  
21:23:09 25 So out of courtesy and transparency, we like to provide

1 T. MOZG - DX BY MR. HARRINGTON

21:23:13 2 some background information how they should handle and  
21:23:16 3 use their discretion on how people make entry into the  
21:23:22 4 United States.

21:23:23 5 Q. And then a short time later above that, there is  
21:23:35 6 an e-mail from you to Mr. Millich, and it appears to be  
21:23:42 7 in response to his inquiry. Is that right?

21:23:45 8 A. Yes.

21:23:45 9 Q. And you make some suggestions for how Mr.  
21:23:48 10 Bongiovanni should be approached. Is that right?

21:23:52 11 A. Yes.

21:23:52 12 Q. And how to talk to him, is that right?

21:23:56 13 A. Yes.

21:23:56 14 Q. And what was that based on?

21:23:58 15 A. Considering Mr. Bongiovanni was a former law  
21:24:03 16 enforcement officer, I mean, I wanted it to look like a  
21:24:05 17 random inspection. That is not my intention to  
21:24:08 18 embarrass anybody, so, that is why I requested that.  
21:24:12 19 It's out of courtesy and it makes it less awkward for  
21:24:16 20 the officers conducting the inspection and for the  
21:24:19 21 subject making entry.

21:24:20 22 Q. So that the primary concern was courtesy for him  
21:24:26 23 as a former officer as opposed to trying to get  
21:24:30 24 information (inaudible)?

21:24:32 25 A. Well, I didn't want to make it awkward for the

1 T. MOZG - DX BY MR. HARRINGTON

21:24:36 2 officers and Mr. Bongiovanni. Like I said, I wasn't  
21:24:39 3 there conducting the inspection personally.

21:24:51 4 Q. Now, on page 2 of Defendant's Exhibit E, there is  
21:24:57 5 an e-mail from Mr. Candela to you with copies to other  
21:25:07 6 persons. Is that right?

21:25:07 7 A. That's correct.

21:25:07 8 Q. And this appears to be an e-mail summary of what  
21:25:10 9 happened with the encounter of Mr. Bongiovanni at the  
21:25:13 10 Baltimore airport?

21:25:13 11 A. Yes, it appears to be a basic update of how the  
21:25:17 12 inspection occurred.

21:25:18 13 Q. Did you know Mr. Candela before this?

21:25:20 14 A. No.

21:25:20 15 Q. And did you forward this information to anybody  
21:25:25 16 else?

21:25:25 17 A. I don't recall. If I did, it should be time  
21:25:30 18 stamped on there.

21:25:31 19 Q. Now, one last thing, if I could. I'd like to  
21:25:46 20 show you Defendant's Exhibit F, which is a two-page  
21:25:50 21 document, this is the first page. Do you recognize this  
21:25:56 22 document, the first page of it?

21:25:57 23 A. Yes, I do.

21:25:58 24 Q. Can you tell us what that is?

21:26:00 25 A. Basically TECS is a law enforcement tool, and

1 T. MOZG - DX BY MR. HARRINGTON

21:26:05 2 that notifies local officers, in this example,  
21:26:11 3 Baltimore, that Mr. Bongiovanni would be making entry  
21:26:13 4 into the United States as a certain place and time.

21:26:16 5 Q. And then it makes a request to refer for  
21:26:22 6 secondary inspection, right?

21:26:24 7 A. Yes. I believe that is automated generated  
21:26:28 8 remarks. Those are drop down boxes and basically you  
21:26:32 9 request that the passenger be referred to secondary  
21:26:35 10 inspection.

21:26:36 11 Q. But on Exhibit 1, either page one or the second  
21:26:40 12 page, there is nothing in there that indicates any  
21:26:44 13 reasoning why there would be a secondary inspection. Is  
21:26:47 14 that right?

21:26:47 15 A. In the one-day lookout hit, I don't believe there  
21:26:50 16 is room for comments. However, I believe that Agent  
21:26:54 17 Curtis Ryan did have a different lookout hit on Agent  
21:26:59 18 Bongiovanni.

21:27:00 19 Q. What does that mean?

21:27:01 20 A. Basically, TECS is a law enforcement system and  
21:27:04 21 you can flag that somebody is subject to investigation.  
21:27:08 22 This lookout hit is merely highlighting the travel  
21:27:22 23 itinerary of a passenger.

21:27:24 24 MAGISTRATE JUDGE ROEMER: Mr. Harrington, if  
21:27:26 25 I can interrupt for a second. I don't have a page two



1 T. MOZG - DX BY MR. HARRINGTON

21:27:29 2 for exhibit F and I think we said C, D, and E in  
21:27:36 3 evidence, but I don't think I we mentioned F.

21:27:40 4 MR. TRIPI: I was going to move it.

21:27:41 5 MAGISTRATE JUDGE ROEMER: So exhibit F shall  
21:27:43 6 be admitted into evidence.

21:27:43 7 **(Whereupon, Exhibit F was received into**  
21:27:43 8 **evidence.)**

21:27:45 9 Go ahead, Mr. Harrington, and sorry to  
21:27:48 10 interrupt you.

21:27:48 11 MR. HARRINGTON: It was my error, sir. Can  
21:27:51 12 you.

21:27:51 13 Q. Can you explain what you just said what Mr. Ryan  
21:27:55 14 did. You said he sent some other form?

21:27:57 15 A. No, it's administrative in the electronic systems  
21:28:02 16 that HSI utilizes. If somebody is under investigation  
21:28:06 17 and you have a case file, you basically put all of their  
21:28:31 18 biographic information in there. And it is viewable by  
21:28:44 19 Customs and Border Protection. The exhibit that you  
21:28:48 20 showed me with the one-day hit that says "refer for  
21:28:53 21 secondary inspection," I did that to basically highlight  
21:28:57 22 Mr. Bongiovanni's travel itinerary so he would be  
21:29:01 23 referred to for secondary inspection when he made entry  
21:29:12 24 to the United States and Baltimore at a CBP port of  
21:29:17 25 entry.

1 T. MOZG - DX BY MR. HARRINGTON

21:29:19 2 Q. Have you seen the document that Ryan generated?

21:29:22 3 A. It's not a document. It's a case file, and when  
21:29:25 4 you have a case file, you basically put a person's name  
21:29:28 5 in there electronically, and it's no different than  
21:29:33 6 having a paper case file, it's just electronic.

21:29:36 7 Q. Well, was something different than the lookout  
21:29:41 8 sent to the people in Baltimore?

21:29:42 9 A. It that would be my e-mail.

21:29:44 10 Q. That would be what?

21:29:45 11 A. The previous email you had on the generator.

21:29:48 12 Q. What Ryan generated you said was not sent?

21:29:59 13 A. No, that is part of a case file that is separate  
21:30:03 14 from this one day lookout hit that you just showed me.

21:30:06 15 Q. My question is, whether it's a case file or  
21:30:09 16 whatever else you call it, was that sent to Baltimore?

21:30:12 17 A. No, the case file was not sent to Baltimore.

21:30:15 18 Q. Was anything else sent other than what you've  
21:30:18 19 shown us here, the lookout and exhibit F and the e-mail.

21:30:23 20 A. The e-mail that I sent to Michael Millich was  
21:30:25 21 sent to Baltimore, Mr. Candela was in Baltimore, that is  
21:30:27 22 the only information I sent over as background  
21:30:29 23 information for the anticipated entry of Joseph  
21:30:33 24 Bongiovanni.

21:30:35 25 MR. HARRINGTON: That's all I have.

1 T. MOZG - CX BY MR. TRIPI

21:30:37 2 MAGISTRATE JUDGE ROEMER: Thank you, sir.

21:30:37 3 Mr. Tripi.

21:32:35 4 MR. TRIPI: Judge, before we get going, I  
21:32:40 5 was mistaken. I have an unredacted copy. It's exhibit  
21:32:44 6 E, but has that paragraph.

21:32:52 7 MAGISTRATE JUDGE ROEMER: Okay. Want to  
21:32:53 8 hand that up?

21:32:53 9 MR. TRIPI: That is my only copy, if I could  
21:32:55 10 get back that copy.

21:32:57 11 MAGISTRATE JUDGE ROEMER: Sure.

21:33:00 12 CROSS EXAMINATION BY MR. TRIPI:

21:33:00 13 Q. Just to clarify, putting on Defense Exhibit E, at  
21:33:10 14 the bottom there is what looks to be an automated e-mail  
21:33:13 15 notification to Curtis Ryan on April 20th, correct?

21:33:17 16 A. Yes.

21:33:17 17 Q. And that is notifying of some flight manifest  
21:33:23 18 information regarding Bongiovanni?

21:33:24 19 A. Correct, and that was in April of 2019.

21:33:27 20 Q. Is that like the text notification that you're  
21:33:31 21 talking about that starts the process?

21:33:32 22 A. Yes.

21:33:32 23 Q. And then Defense Exhibit F, which is in evidence,  
21:33:37 24 is you taking an additional step to highlight that  
21:33:40 25 travel itinerary calling it a one-day lookout, correct?

1 T. MOZG - CX BY MR. TRIPI

21:33:44 2 A. Yes, correct.

21:33:45 3 Q. And in there, your remarks are simply "refer for  
21:33:49 4 secondary inspection"?

21:33:50 5 A. Yes.

21:33:52 6 Q. And I suppose, if they so decided, that the  
21:33:56 7 people that worked in BWI could have ignored this and  
21:34:00 8 not done a search?

21:34:01 9 A. Yes.

21:34:02 10 Q. And not done a secondary inspection?

21:34:04 11 A. Correct, it's up to the local discretion on the  
21:34:18 12 officers conducting the inspection.

21:34:23 13 Q. And, this is Government's Exhibit 34, which I  
21:34:29 14 believe is an e-mail that you were shown, is also  
21:34:34 15 duplicated in Defense Exhibit E?

21:34:37 16 A. Yes.

21:34:37 17 Q. And I'll show it to you in Government's Exhibit  
21:34:40 18 34. And in your e-mail, you said "discretionary  
21:34:45 19 dissemination," correct?

21:34:47 20 A. Yes.

21:34:47 21 Q. What did you mean by that?

21:34:48 22 A. I meant discretion, here is the background  
21:34:51 23 information, we have a subject of investigation making  
21:34:55 24 entry into the United States, we're requesting an  
21:34:58 25 inspection, but based on this information, use your

1 T. MOZG - CX BY MR. TRIPI

21:35:01 2 discretion and conduct the inspection locally as you see  
21:35:05 3 fit.

21:35:37 4 Q. In your experience, are there any issues with  
21:35:41 5 sharing that information between and among CBP officers  
21:35:45 6 or Homeland Security agents?

21:35:47 7 A. No.

21:35:47 8 Q. How about information resulting from any  
21:35:49 9 secondary inspection?

21:35:51 10 A. No. If it's within the Department of Homeland  
21:35:54 11 Security, there are no third-party restrictions on  
21:35:57 12 sharing information. Everyone has common system access  
21:36:01 13 and for liaison information.

21:36:14 14 Q. And did you put in the one-day lookout, Defense  
21:36:21 15 Exhibit F, in evidence prior to writing the e-mail that  
21:36:25 16 was just up on the screen?

21:36:27 17 A. Yes.

21:36:28 18 Q. Which is Government's Exhibit 34?

21:36:31 19 A. That's correct.

21:36:35 20 Q. And was that based upon a request for discussions  
21:37:26 21 you had with Special Agent Curtis Ryan after he became  
21:37:31 22 involved in that process?

21:37:32 23 A. Yes.

21:37:33 24 Q. As it related to that, did you have any other  
21:37:36 25 role other than the one-day lookout and the e-mails that

1 USA VS. J. BONGIOVANNI

21:37:39 2 we observed?

21:37:40 3 A. No.

21:37:45 4 MR. TRIPI: Nothing further, Judge. Thank  
21:37:45 5 you.

21:37:48 6 MAGISTRATE JUDGE ROEMER: Thank you, sir

21:37:49 7 MR. Harrington?

21:37:49 8 MR. HARRINGTON: No further questions.

21:37:51 9 MAGISTRATE JUDGE ROEMER: You can step down.

21:37:53 10 Thank you.

21:37:54 11 MR. Harrington?

21:37:54 12 MR. HARRINGTON: We have no further

21:37:56 13 witnesses.

21:37:57 14 MAGISTRATE JUDGE ROEMER: Mr. Tripi.

21:37:58 15 MR. TRIPI: We rested, Judge.

21:37:59 16 MAGISTRATE JUDGE ROEMER: Okay. No

21:38:00 17 rebuttal?

21:38:01 18 MR. TRIPI: No rebuttal.

21:38:03 19 MAGISTRATE JUDGE ROEMER: Okay. We'll put a

21:38:05 20 scheduling order in place. How long to get the

21:38:09 21 transcript, Mr. Tripi? Any idea?

21:38:14 22 MR. TRIPI: Thirty days, usually. I think  
21:38:15 23 it's 30 days.

21:38:16 24 THE CLERK: Thirty days.

21:38:18 25 MAGISTRATE JUDGE ROEMER: Okay.

1 USA VS. J. BONGIOVANNI

21:38:19 2 THE CLERK: That will take us to  
21:38:21 3 approximately February 7th.

21:38:25 4 THE COURT: And how long would counsel like  
21:38:26 5 to follow or we'll do simultaneous filings and then  
21:38:30 6 simultaneous responses.

21:38:33 7 MR. HARRINGTON: Maybe three weeks after  
21:38:35 8 that, Judge?

21:38:35 9 MR. TRIPI: I'm out of the district from  
21:38:37 10 February 12th to the end of February. Could we push  
21:38:42 11 that a little bit.

21:38:43 12 MAGISTRATE JUDGE ROEMER: Thirty days, does  
21:38:45 13 that sound reasonable? Thirty days from February.

21:38:49 14 THE CLERK: March 7th.

21:38:50 15 MR. TRIPI: That would be fine, thank you.

21:38:54 16 MAGISTRATE JUDGE ROEMER: And how long to  
21:38:56 17 respond? Two weeks, is that enough?

21:38:57 18 MR. HARRINGTON: Yes.

21:38:58 19 MR. TRIPI: Yes, Judge.

21:38:59 20 THE CLERK: March 21st.

21:39:02 21 MAGISTRATE JUDGE ROEMER: And we'll schedule  
21:39:03 22 a date for oral argument.

21:39:13 23 THE CLERK: March 29th at 1 o'clock.

21:39:21 24 MR. TRIPI: That's fine. Judge, will that  
21:39:29 25 oral argument, I'll ask a question. That oral argument

1 USA VS. J. BONGIOVANNI

21:39:32 2 will just be on this issue with these parties or are you  
21:39:35 3 anticipating --

21:39:36 4 MAGISTRATE JUDGE ROEMER: We've had oral  
21:39:38 5 argument with Gerace already, right, and there was no  
21:39:41 6 hearings in Gerace.

21:39:42 7 MR. TRIPI: No hearings in Gerace. There  
21:39:44 8 were other motion issues that Mr. Harrington had in his  
21:39:48 9 motions that I think --

21:39:49 10 MAGISTRATE JUDGE ROEMER: I thought we  
21:39:50 11 argued those before, but Mr. Harrington.

21:39:52 12 MR. HARRINGTON: We deferred some of them.

21:39:54 13 MR. TRIPI: I think some of them may still  
21:39:56 14 need to be argued.

21:39:56 15 MAGISTRATE JUDGE ROEMER: We'll open them on  
21:39:58 16 that date, we'll argue anything anybody wants to argue.

21:40:01 17 MR. TRIPI: Okay. You don't really want to  
21:40:05 18 have it that broad, Judge.

21:40:06 19 MAGISTRATE JUDGE ROEMER: Okay. Or whatever  
21:40:08 20 motions that Mr. Harrington wants to continue to argue.

21:40:11 21 MR. TRIPI: Mr. Harrington and I will speak  
21:40:14 22 and discuss and see what still may be deferred from  
21:40:17 23 previously.

21:40:18 24 MAGISTRATE JUDGE ROEMER: But all of the  
21:40:19 25 briefing is done on those.



1 USA VS. J. BONGIOVANNI

21:40:21 2 MR. TRIPI: Yes.

21:40:22 3 MAGISTRATE JUDGE ROEMER: And the only  
21:40:23 4 briefing we have left is this hearing.

21:40:25 5 MR. TRIPI: That's correct.

21:40:26 6 MAGISTRATE JUDGE ROEMER: Anything else, Mr.  
21:40:27 7 Tripi?

21:40:27 8 MR. TRIPI: Not from the government.

21:40:29 9 MAGISTRATE JUDGE ROEMER: Mr. Harrington.

21:40:30 10 MR. HARRINGTON: Can I explain about all my  
21:40:32 11 complaints about the world?

21:40:33 12 MR. TRIPI: That is why I said we might want  
21:40:35 13 to limit it a little bit.

21:40:36 14 MAGISTRATE JUDGE ROEMER: You can submit me  
21:40:38 15 a list beforehand and we'll go down and check that. All  
21:40:42 16 right. It's not St. Patrick's day, we're not having  
21:40:46 17 anything on St. Patrick's day. Okay. Have a great day.  
21:40:51 18 Stay safe.

21:40:53 19 MR. HARRINGTON: You too, Judge.

21:40:55 20 MR. TRIPI: Thank you.

21:41:01 21 THE CLERK: Back on the record.

21:41:04 22 MR. TRIPI: Judge, I may have put this on  
21:41:06 23 the record earlier, but just so the record is clear.  
22:13:05 24 When I transmitted the e-mail that you have unredacted,  
22:13:10 25 which is a version that the Defense Exhibit E into

1 USA VS. J. BONGIOVANNI

22:14:01 2 evidence. In my transmittal e-mail to Mr. Harrington, I  
22:14:24 3 stated to him the redaction in the Gernatt e-mail dated  
22:14:38 4 April 26, 2019 at 10:22 a.m. three days after the border  
22:14:43 5 search generally relates to his view of the scope of the  
22:15:24 6 investigation and not the border search at issue and so  
22:15:28 7 that was my explanation of redaction, and I wanted the  
22:15:48 8 Court to have that context.

22:16:23 9 MAGISTRATE JUDGE ROEMER: Okay. Thank you.

22:16:26 10 Anything further, Mr. Harrington, any  
22:16:30 11 complaints?

22:16:30 12 MR. HARRINGTON: I have many, but I'll defer  
22:16:33 13 them to March.

22:16:35 14 MAGISTRATE JUDGE ROEMER: Right. Have a  
22:16:36 15 great day.

22:16:37 16 MR. TRIPI: You too.

22:16:40 17 MR. HARRINGTON: Thank you.

18

19

20

21

22

23

24

25

\* \* \*

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
of the record to the best of my ability of proceedings  
transcribed from the audio in the above-entitled matter.

S/ Karen J. Clark, RPR

Official Court Reporter